IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 22220 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DIVISIONAL CONTROLLER,GUJARAT STATE ROAD TRANSPORT CORPN. - Petitioner(s)

Versus

VINUBHAI G. BABARIA - Respondent(s)

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Appearance :

MS SEJAL K MANDAVIA for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1,
MR KISHOR M PAUL for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 03/05/2006

ORAL JUDGMENT

1. Heard the learned Advocate, Ms.Sejal K. Mandavia, appearing on behalf of petitioner and

learned Advocate, Mr.K.M.Paul, appearing on behalf of respondent.

2. With the consent of both the parities, matter is taken up for final hearing today.

3. In the present petition, the petitioner Corporation has challenged the award passed by Industrial Tribunal, Rajkot in Reference (IT) No.174 of 1997 dated 30th November,2004.

3. Learned Advocate, Ms.Mandavia, submitted that the Tribunal has committed gross error in modifying the punishment. She submitted that past record produced before the Tribunal was not considered by the Tribunal. She also emphasized that past record is bad. She submitted that in local bus, stand booking is permissible but not the road booking. This is also an irregularity committed by the workman. She submitted that Tribunal has modified the punishment and also

directed to the petitioner Corporation to pay 50% difference of arrears to the workman and, therefore, the award passed by Tribunal suffers from non-application of mind and it amounts to basic error committed by the Tribunal.

4. Learned Advocate, Mr.Paul, appearing on behalf of respondent workman, submitted that no error is committed by the Tribunal in passing the award and, therefore, no interference is required by this Court.

5. I have considered the submissions made by learned Advocates appearing for the parties. I have also perused the award passed by Tribunal and past record of the respondent workman produced by learned Advocate, Ms.Mandavia. The Tribunal has considered the fact that workman had not recovered the amount of fare from passenger. If the workman was in default, then, the passenger should not have to pay the fine to the

checking staff. In this case, passenger has paid the penalty to the checking inspector for the act of not demanding the ticket from the conductor in time. The defence of the workman was that bus was late and it was a local bus and road booking was going on, which have been rightly appreciated by the Tribunal and it amounts to negligible irregularities which bound to happen in such circumstances and, therefore, Tribunal has modified the punishment. For that, Tribunal has jurisdiction. The competent authority has imposed the punishment of stoppage of three increments with permanent effect which has been modified by the Tribunal to stoppage of two increments without cumulative effect with a direction to pay 50% arrears of salary. The past record is always not a ground to consider for punishment. In the past record no serious defaults have been committed by the workman and no serious punishment has been imposed by the Corporation. Therefore, according to my opinion, this being a

decision making process, the challenge is not against the decision. But in process, if there is any irregularity committed, then, this Court must have interfered. Therefore, according to my opinion, Tribunal has rightly examined the matter and exercised the power in modifying the punishment considering the defence of the workman. Therefore, Industrial Tribunal has not committed any error which requires any interference by this Court while exercising the power under Article 227 of the Constitution of India. Hence, there is no substance in the present petition. Present petition stands dismissed. Rule is discharged. Interim relief, if any, stands vacated.

(H.K.RATHOD,J.)

(vipul)